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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HIGINIO BARRERA,

 Petitioner,

 v.

BRIAN WILLIAMS, SR., et al.,

 Respondents.

Case No. 2:15-01515-JCM-GWF

ORDER

Before the court are the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 7), respondents’ answer (ECF No. 51), and petitioner’s reply (ECF No. 52). The court finds that relief is not warranted on the remaining ground, and the court denies the petition.

After a jury trial in state district court, petitioner was convicted of battery constituting domestic violence, battery with the use of a deadly weapon constituting domestic violence, and burglary while in possession of a deadly weapon. Ex. 27 (ECF No. 13-7). Petitioner appealed, and the Nevada Supreme Court affirmed. Ex. 43 (ECF No. 13-23). Petitioner then filed a post-conviction habeas corpus petition in the state district court. Ex. 50 (ECF No. 13-30). The state district court denied the petition. Ex. 62 (ECF No. 13-42). Petitioner appealed, and the Nevada Court of Appeals affirmed. Ex. 92 (ECF No. 14-17).

Petitioner then commenced this action. The petition originally contained nine grounds for relief. The court dismissed ground 7 because it was procedurally defaulted, and the court found

1 that grounds 1 through 6 and 8 were not exhausted. ECF No. 29. Upon petitioner's election, the
2 court dismissed the unexhausted grounds. ECF No. 34. Ground 9 remains.

3 Reasonable jurists would not find debatable or wrong the court's ruling on the dismissal
4 of these grounds, and the court will not issue a certificate of appealability for the dismissals of
5 grounds 1 through 8.

6 Congress has limited the circumstances in which a federal court can grant relief to a
7 petitioner who is in custody pursuant to a judgment of conviction of a state court.

8 An application for a writ of habeas corpus on behalf of a person in custody
9 pursuant to the judgment of a State court shall not be granted with respect to any
10 claim that was adjudicated on the merits in State court proceedings unless the
adjudication of the claim—

11 (1) resulted in a decision that was contrary to, or involved an unreasonable
application of, clearly established Federal law, as determined by the Supreme
12 Court of the United States; or

13 (2) resulted in a decision that was based on an unreasonable determination of the
facts in light of the evidence presented in the State court proceeding.

14 28 U.S.C. § 2254(d). “By its terms § 2254(d) bars relitigation of any claim ‘adjudicated on the
15 merits’ in state court, subject only to the exceptions in §§ 2254(d)(1) and (d)(2).” Harrington v.
16 Richter, 562 U.S. 86, 98 (2011).

17 Federal habeas relief may not be granted for claims subject to § 2254(d) unless it is
18 shown that the earlier state court's decision “was contrary to” federal law then
clearly established in the holdings of this Court, § 2254(d)(1); Williams v. Taylor,
19 529 U.S. 362, 412 (2000); or that it “involved an unreasonable application of”
20 such law, § 2254(d)(1); or that it “was based on an unreasonable determination of
the facts” in light of the record before the state court, § 2254(d)(2).

21 Richter, 562 U.S. at 100. “For purposes of § 2254(d)(1), ‘an unreasonable application of federal
22 law is different from an incorrect application of federal law.’” Id. (citation omitted). “A state
23 court's determination that a claim lacks merit precludes federal habeas relief so long as
24 ‘fairminded jurists could disagree’ on the correctness of the state court's decision.” Id. (citation
25 omitted).

26 [E]valuating whether a rule application was unreasonable requires considering the
27 rule's specificity. The more general the rule, the more leeway courts have in
reaching outcomes in case-by-case determinations.

28 Yarborough v. Alvarado, 541 U.S. 652, 664 (2004).

1 Under § 2254(d), a habeas court must determine what arguments or theories
2 supported or, as here, could have supported, the state court's decision; and then it
3 must ask whether it is possible fairminded jurists could disagree that those
4 arguments or theories are inconsistent with the holding in a prior decision of this
5 Court.

6 Richter, 562 U.S. at 102.

7 As a condition for obtaining habeas corpus from a federal court, a state prisoner
8 must show that the state court's ruling on the claim being presented in federal
9 court was so lacking in justification that there was an error well understood and
10 comprehended in existing law beyond any possibility for fairminded disagreement.

11 Id. at 103.

12 Ground 9 is a claim that the evidence was insufficient to support the jury's verdicts. On
13 this issue, the Nevada Supreme Court held:

14 Appellant Higinio Barrera contends that insufficient evidence was adduced to
15 support the jury's verdict. Barrera claims that the victim was not credible because
16 her various statements and trial testimony were inconsistent and contradictory and
17 the State failed to produce evidence to corroborate her "scattered story of the
18 alleged events." We disagree because the evidence, when viewed in the light most
19 favorable to the State, is sufficient to establish guilt beyond a reasonable doubt as
20 determined by a rational trier of fact. See Jackson v. Virginia, 443 U.S. 307, 319
21 (1979); Mitchell v. State, 124 Nev. 807, 816, 192 P.3d 721, 727 (2008).

22 The victim testified that Barrera, her boyfriend at the time of the offense, believed
23 that she was cheating on him. The victim's son-in-law testified that Barrera told
24 him that he believed she was cheating on him and that "[h]is friends were basically
25 motivating him to kill her." The son-in-law repeated a story Barrera told him
26 about a Cuban man who murdered his wife because she was cheating on him and
27 "that's what Cubans do; they don't . . . allow themselves to be humiliated." The
28 victim testified that on the night of the attack, Barrera came to her apartment
wearing white cloth gloves, put a rope around her neck, began choking her, and
stated that he was going to kill her. The victim testified that Barrera stabbed her
with a knife taken from her kitchen. Without objection, the State noted for the
record that the victim pointed to the scar from the stabbing on "the lower portion
of the neck; the upper portion of the chest." The victim also cut her hand on the
knife while trying to defend herself. Barrera, however, testified that the victim
attacked him with a knife and cut herself in the process. At trial, the victim
identified the rope and knife used in the attack, and the white gloves Barrera was
wearing at the time.

It is for the jury to determine the weight and credibility to give conflicting
testimony, McNair v. State, 108 Nev. 53, 56, 825 P.2d 571, 573 (1992), and a
jury's verdict will not be disturbed on appeal where, as here, sufficient evidence
supports the verdict, Bolden v. State, 97 Nev. 71, 73, 624 P.2d 20, 20 (1981); see
also NRS 33.018; NRS 200.481; NRS 205.060(1). Therefore, we conclude that
Barrera's contention is without merit, and we

ORDER the judgment of conviction AFFIRMED.


1 Ex. 43, at 1-3 (ECF No. 13-23, at 2-4). The court has reviewed the transcript of the trial and the
2 statutes governing battery and burglary. The testimony of the victim is consistent with the
3 Nevada Supreme Court's description. See Ex. 20, at 36-52 (ECF No. 12-20, at 37-53). Although
4 petitioner argues that the victim should not be believed, the Nevada Supreme Court correctly
5 noted that it is the duty of the jury to determine whom to believe. Based upon the testimony at
6 trial, the Nevada Supreme Court's ruling was not an unreasonable determination of fact in light of
7 the evidence presented, and it was not an unreasonable application of Jackson v. Virginia.
8 Ground 9 is without merit.

9 Reasonable jurists would not find debatable this court's conclusion, and the court will not
10 issue a certificate of appealability for ground 9.

11 IT THEREFORE IS ORDERED that the petition for a writ of habeas corpus pursuant to
12 28 U.S.C. § 2254 (ECF No. 7) is **DENIED**. The clerk of the court shall enter judgment
13 accordingly and close this action.

14 IT FURTHER IS ORDERED that a certificate of appealability will not issue.

15 DATED: July 13, 2018.

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17 JAMES C. MAHAN
18 United States District Judge
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